

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                           |   |              |
|---------------------------|---|--------------|
| KEVIN JOHNSON,            | : | CIVIL ACTION |
|                           | : |              |
| Petitioner,               | : | NO. 08-826   |
|                           | : |              |
| v.                        | : |              |
|                           | : |              |
| JOSEPH J. PIAZZA, et al., | : |              |
|                           | : |              |
| Respondents.              | : |              |

**O R D E R**

**AND NOW**, this **12th day of August 2009**, upon consideration of Respondent's motion for reconsideration (doc. no. 13) and of the Report and Recommendation of United States Magistrate Peter B. Scuderi (doc. no. 8), and Petitioner's objections thereto (doc. no. 11), and for the reasons stated in the Court's Memorandum dated August 12, 2009, it is hereby **ORDERED** that:

1. Respondent's motion for reconsideration (doc. no. 13) is **GRANTED** and the Court's Memorandum and Order dated December 5, 2008 (doc. no. 12) is **VACATED in part**;
2. The Report and Recommendation (doc. no. 8) is **APPROVED and ADOPTED**;
3. Petitioner's objections to the Report and Recommendation (doc. no. 11) are **and OVERRULED**;
4. The Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, (doc. no. 1) is **DENIED** and

**DISMISSED;**

5. There is no probable cause to issue a Certificate of Appealability;<sup>1</sup> and
6. The case shall be marked **CLOSED**.

**AND IT IS SO ORDERED.**

S/Eduardo C. Robreno  
**EDUARDO C. ROBRENO, J.**

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<sup>1</sup> A prisoner seeking a certificate of appealability must demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). No basis for a certificate of appealability exists in this case, as the petitioner is unable to meet this standard.